

IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'C' NEW DELHI

BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 1985/Del./2012  
Asstt. Year : 2007-08

A.D.I.T. (E), TC-II, vs. Hamdard Nation Foundation (India),  
New Delhi. Hamdard Building, 2A/3, Asaf Ali Road,  
New Delhi (PAN: AAATH 0843 G)

C.O. No.231/Del./2012  
(in ITA No. 1985/Del./2012)  
Asstt. Year : 2007-08

Hamdard Nation Foundation (India), vs. A.D.I.T. (E), TC-II,  
Hamdard Building, 2A/3, Asaf Ali Road, New Delhi.  
New Delhi. (Appellant) (Respondent)

Appellant by : Sh. A.K. Saroha, CIT/DR  
Respondent by : Sh. R.M. Mehta, Advocate  
Date of hearing : 14.09.2016  
Date of pronouncement : 25.10.2016

ORDER

Per L.P. Sahu, Accountant Member:

The appeal by the Revenue is directed by assessee against the order dated 31.01.2012 of ld. CIT(A)-XII, New Delhi for the assessment year 2007-08 on the following ground :

*“On the facts and in the circumstances and in law, the Ld. CIT(A) has erred in allowing the exemption u/s. 11 of the Act which was denied by AO because of violation of section 13(2)(b) r.w.s. 13(3) as assessee has given its properties at prime locations to a party at a highly concessional rent which is specified person as per sec. 13(3) of the Act.”*

The assessee has also filed cross objection in support of the first appellate order.

2. The brief facts of the case are that the assessee trust was registered u/s. 12A vide order of DIT(Exemption dated 20.07.1998 and was granted approval u/s. 80G(5)(vi) of the Act. The assessee filed its return of income on 31.10.2007 declaring nil income, which was processed u/s. 143(1) and was later on selected for scrutiny and assessment was completed u/s. 143(3) of the Act. During the scrutiny proceedings, the Assessing Officer noted that in the income and expenditure account, following incomes were credited :

(i). Donation from Hamdard Dawakhana (WAKF)	9,43,81,000/-
(ii). Rental income	46,41,028/-
(iii). Retention money	27,357/-
(iv). Sale of car	80,000/-

The assessee trust also received corpus donation of Rs.20 crores from Hamdard Dawakhana and rental income was also received from Hamdard Dawakhana. The Assessing Officer enquired about the rental income. The

Assessing Officer asked for the details of rental income received from Hamdard Dawakhana, which the assessee submitted as under :

Sl. No.	Address of Properties	Tenant/lease	Area under lease	Amount of rent
1	No. 2A/3, Asaf All Road, New Delhi-110002	Hamdard Dawakhana (WAKF)	3259.50 Sq. Metre. (35072 Sq.ft.)	Rs. 24,00,000/- (Rs. 2 Lacs per month)
2	13, Rajdoot Marg New Delhi	Hamdard Dawakhana (WAKF)	485.53 Sq. metre(5224.30 Sq.ft.)	Rs. 18,00,000/- (Rs. 1.50 lacs p.m.)
3	Godown at Pulpulladpur	Hamdard Dawakhana (WAKF)	N.A.	Rs. 22,133/- p.m.
4	2052, 3626, Katra Dina Beg, Delhi.	Hamdard Dawakhana (WAKF)	N.A.	No rent received.
5	2267/69, Gali Qasimjan, Delhi	Hamdard Dawakhana (WAKF)	N.A.	No rent received.

3. The Id. Assessing Officer made independent enquiry from CB Richard Ellis South Asia Pvt. Ltd. who submitted the following information :

*“Residential properties at Chanakyapuri, New Delhi:*

*The market rental per sq. ft. for the residential prop3rties would be as under:*

*F.Y. 2006-07 : Rs. 125 – 150 sq. ft./pm*

*F.Y. 2007-08 : Rs.120-140 sq. ft./pm*

*Commercial office space at Asaf Ali Road and nearby location*

*The average rental rates would be as under :*

*Year 2007 : Rs.55-6- per sq. ft. p.m.*

*Year 2008 : Rs.80-100/- per sq. ft. p.m.*

The Assessing Officer further noted that in view of the above information, the building was let out at a very lower rate as compared to the market rate as discovered by the AO from various websites i.e., Makaan.com, 99 acres.com. Magic Bricks.com. The Assessing Officer, therefore, vide show cause notice dated 09.10.2009 asked the assessee to show cause why the claim for exemption of income u/s. 11(1) on account of application of income to charitable purpose, may not be denied in view of the aforesaid violation of provisions of section 13(2)(b) r.w.s. 13(3) of the Act. In response to the show cause notice, the AR of the assessee submitted as under :

*"Please refer your letter dated 9.10.2009 pointing out that the rent received from the following properties :*

*(a). Property No. 2-A/3, Asaf Ali Road, New Delhi-110002*

*(b). Property No. 13, Rajdoot Marg, New Delhi.*

*Appear to be let out at concessional rate than the prevailing market rate. The said opinion has been arrived that on the basis of conjecture and surmises. It has been mentioned on page-2 of the said letter that the said view has been formed according to various properties consultants, brokerage houses, in absence of any documentary evidence the rates furnished by any third party is not opened to verification.*

*In short it is submitted before your honor that the rent payable/paid by the Hamdard (waf) Laboratories in accordance with registered leased agreement dated 30.03.2006 are not less than the ratable value fixed by the NDMC and MDC.*

*Photo copies of bills in support of our claim are sufficient to justify our claim and negate the opinion expressed in the impugned letter".*

4. The Assessing Officer did not agree with the submissions of the AR of assessee and concluded that the assessee has violated the provisions of section 13(2)(b) read with section 13(3) of the Act and he treated the assessee as an AOP and completed the assessment at a taxable income of Rs.9,75,37,560/-.

5. Against the order of the AO, the assessee appealed before the first appellate authority and filed written submissions. Remand reports were also called from the AO. The first remand report was submitted by the Assessing Officer on 18.02.2010 and another remand report was submitted on 24.01.2011. The next remand report was submitted on 04.05.2011 by the Assessing Officer to the Id. CIT(A) as placed at pages 8 to 13, 84 to 85 and 90 of the paper book respectively. The assessee has also filed reply against the remand report which is kept in the paper book. The Id. CIT(A) allowed the appeal of the assessee on the submissions of the assessee. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

6. The Id. DR submitted that Hamdard Dawakhana has made corpus donations of Rs.20 crores, meaning thereby he has substantial interest as per provisions of section 13(2)(b) r.w.s. 13(3). The exemption u/s. 11 cannot be

allowed to the assessee because the assessee has violated the conditions laid down by the IT Act. The ld. CIT(A) has not considered the remand reports. He has considered the submissions of the assessee and has made a vague order. He should have passed speaking order after considering the findings of the Assessing Officer, its remand reports, their rejoinder and all the material available on record, which is lacking in the instant case. As per finding of the AO regarding prevailing market rate, the building was let out without charging adequate rent from the tenant in respect of properties mentioned at Sl. No. 1 & 2 as shown in the chart above. The ld. DR further submitted that the assessee has not charged any rent for the building let out to Hamdard Dawakhana as mentioned at Sl. No. 4 & 5 in the chart above. He also relied on the decision of Hon'ble Supreme Court in the case of Aditanar Educational Institution vs. Addl. CIT, 90 Taxman 528 (SC) and of Rajasthan High Court in Ram Bhawan Dharamshala vs. State of Rajasthan, 124 Taxman 149 (Raj.).

7. The ld. AR of the assessee, on the other hand, submitted that the ld.CIT(A) has made good order and the same does not require any interference. The principle of consistency should be adopted by the AO. Building was let out at the rate more than the rate of NDMC and MDC. The

building was let out since 16.07.1982 at monthly rent of Rs.20,000/- per month. The details of rent since 1982 are as under :

<u>Period</u>	<u>Monthly Rent</u>	
16.07.82 to 15.11.82	20,000.00	(Agreement enclosed pages 1-4)
16.11.82 to 31.03.90	10,750.00	
01.04.90 to 31.03.92	20,500.00	
01.04.92 to 31.03.95	1,15,000.00	
01.04.95 to 31.08.96	1,38,000.00	
01.09.96 to 31.03.98	1,50,000.00	
01.04.98 to 31.03.06	1,72,500.00	
01.04.06 to 31.03.09	2,00,000.00	(Agreement enclosed pages 5-9)

There is no violation of the Income-tax provisions. The AO collected the evidences behind the back of assessee which were not provided to the assessee in violation of principles of natural justice and used the same against the assessee. He also relied on the following case laws :

- (i). CIT vs. Kamla Town Trust, 279 ITR 89 (All.)
- (ii). CIT vs. M/s Escorts Limited reported in 2011-TIOL-HC-DEL-IT.
- (iii). DDIT vs. Shanti Devi Progressive Education Society- Delhi High Court - order dated 10<sup>th</sup> February, 2011 in ITA No.93/1999.
- (iv) Director of Income-tax (Exemptions) vs. Escorts Cardiac Diseases Hospital Society (2008) 300 ITR 75 (Del.)
- (v). Director of Income-tax (Exemption) vs. Guru Nanak Vidya Bhandar Trust, (2005) 272 ITR 379 (Del.)
- (vi). Director of Income-tax (Exemption) vs. Moti Bagh Mutual aid Education, (2008) 298 ITR 190 (Del.)
- (vii). Commissioner of Income-tax vs. Tiny Tots Education Society, (2011) 330 ITR 21 (P&H).
- (viii). Commissioner of Income-tax vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust reported in 198 ITR 598 (Guj.).
- (ix). CIT vs. Raghubir Saran Charitable Trust, 183 ITR 297 (Del.)
- (x). DCIT vs. Cosmopolitan Education Society, 244 ITR 494 (Raj.)
- (xi). CIT vs. Karimia Trust, 302 ITR 57 (Jhar).

8. We have considered the rival submissions and have perused the entire materials available on record including the findings of the Id. CIT(A) recorded in the impugned order. We find that the Id. CIT(A) while deciding the issue whether the assessee has violated the provisions of Sec. 13(2)(b) r.w.s. 13(3) or not, has simply fallen in agreement with the submissions of the assessee without assigning any plausible reason for the same. It is notable that in the instant case, plenty of enquiries were made at the stage of Assessing Officer to justify inadequacy of rent shown to have been received by assessee. Not only this, on the detailed submissions made on behalf of the assessee, remand reports were called from the Assessing Officer and the Assessing Officer had sent three remand reports, as noted above, to the Id. CIT(A) objecting to the claim of the assessee. However, the Id. CIT(A) has failed to whisper even a single word to discard the stand of the Assessing Officer taken in the assessment order as well as in various remand reports. The Id. CIT(A) has also failed to assign any reason under which he agreed with the submissions of the assessee and allowed the appeal of the assessee recording its findings in a very slip shod manner lacking reasons for determination. It is worthwhile to note that under the provisions of section 250 (6), the first appellate authority while disposing of the appeal is required to pass a speaking order stating therein the points for determination and the reason for the decision, which is

completely absent in the present case. We, therefore, deem it expedient in the interest of justice to set aside the impugned order and restore the matter to the file of Id. CIT(A) for deciding the appeal de novo by way of speaking order after giving reasons for decision in the light of submissions of the assessee as well as remand reports of AO and other materials available on record. Needless to say, reasonable opportunity of being heard shall be provided to both the parties. Accordingly, the appeal of the Revenue deserves to be allowed for statistical purposes. Since, the matter under consideration has been restored to the file of Id. CIT(A) for fresh decision, the cross-objection filed by the assessee in support of the impugned order becomes infructuous and is accordingly dismissed.

9. In the result, the appeal of the revenue is allowed for statistical purposes and the cross objection of the assessee is dismissed.

Order pronounced in the open court on 25.10.2016.

Sd/-

(H.S. SIDHU)  
Judicial Member

Sd/-

(L.P. SAHU)  
Accountant Member

Dated :25.10.2016

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